IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10305 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GANDHI LABOUR INSTITUTE - Petitioner(s)
Versus
VITHALBHAI DAYABHAI KATARIA - Respondent(s)

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Appearance :
SHRI NANDISH CHUDGAR for Petitioner
MR TR MISHRA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 27/07/2007

ORAL JUDGMENT

Shri Nandish Chudgar, learned counsel for the petitioner; Shri T.R. Mishra, learned counsel for the respondent.

2. The employer, being aggrieved by the award dated 12.12.2000 passed by the Presiding Officer, Labour Court, Ahmedabad, in Reference [LCA] No. 12/97 [old Reference [LCA] No. 248/93] is before this Court with a submission that the findings recorded by the learned Labour Court are perverse and consequently the award deserves to be quashed.

3. The short facts necessary for disposal of the present writ application are that the respondent workman was employed as a Peon with the petitioner-establishment; the establishment wanted to employ some persons as Clerks, therefore, they had invited certain applications. 15 persons were taken into zone of consideration after short-listing, there was a direction to the respondent to send interview calls to each of the 15 persons by post. The allegations are that instead of mailing the post, the workman went to the houses of those candidates, informed them that the workman/respondent was to sit in the interview and if an amount of Rs.50/- was paid to him, he

would see that such person was appointed. When some of the candidates appeared in the interview, they found that the present respondent was not in the panel of the interview committee, therefore, they made inquiries. On getting suspicious, the petitioner establishment made certain inquiries, they found that the workman had committed misconduct by collecting money and by making impersonation. Charge sheet was issued to the workman but however, in absence of supply of documents etc., the workman did not take part in the inquiry, the inquiry culminated into the guilt of the non-applicant workman and he was ordered to be sacked. Being aggrieved by the said order of termination, the workman came to the Labour Court. The Labour Court, after recording evidence, came to a conclusion that the inquiry was vitiated being in violation of the principles of natural justice. The Labour Court, however, granted opportunity to the present petitioner to substantiate the allegations of misconduct and provided opportunity to the

parties to lead evidence.

4. The workman stated on oath that he did not meet any of the persons and he was sought to be framed for the reasons best known to the officers of the establishment. The establishment examined its officers to prove that during the course of the investigations, they had recorded statements of some of the witnesses, officers and produced those statements in the Court and proved the same. The establishment also examined one Faisal Shaikh who appeared in the Court and stated that the respondent-workman had come to his place and demanded money. The petitioner also examined one Laxmiben, mother of one Magan Dulera. The said Laxmiben stated in the Court that some of the officers had come to his place to record his statement. The learned Labour Court, after appreciating the evidence, came to a conclusion that statements of Faisal Shaikh and Laxmiben were falling short in bringing the guilt home. It held that the department failed in proving the misconduct, it accordingly allowed the Reference and directed

reinstatement with 20% back wages.

5. Shri Nandish Chudgar, learned counsel for the petitioner submitted that the learned Labour Court was not justified in not relying upon the statement of Faisal Shaikh and the identification made by him in the Court. He also submitted that undisputedly Faisal Shaikh did not bear any enmity with the workman, therefore, his statement ought to have been relied upon. He also submitted that the statement of Magan Dulera was natural and when he stated that he was informed by his mother that the workman had come to his place, then, statement of Magan Dulera ought to have been accepted. He also submitted that the evidence has not been appreciated in accordance with law and as the approach of the Court appeared to be absolutely perverse, this Court should reappreciate the evidence, or in the alternative, remand the matter back to the trial court to redecide the matter. It was also contended that present is a case where establishment/employer has lost confidence in

the workman, therefore, the workman cannot be directed to be reinstated.

6. Shri T.R. Mishra learned counsel for the respondent, however, submitted that present is a case of appreciation of evidence and unless the findings are shown to be perverse, this Court, in its jurisdiction under Article 227 of the Constitution is not required to interfere in the matter.

7. Faisal Shaikh has been examined under Exh. 37. The Court below after referring to its evidence, has given cogent reasons for not relying upon him. The Court below has also found that if Faisal Shaikh did not meet officers of the present petitioner, then, they could not have issued him letter at his new Rajkot address to appear as witness in the Court. The Court below also found that the said evidence was not worth reliance. The Court also found that statement of Faisal Shaikh was not sufficient to fix the liability on the head of the workman. The Court found that statement of Laxmiben was not reliable, because, on one side, she had stated

that she had affixed thumb mark on the document but the document produced in the Court did not bear thumb impression. The Court below also found that her statement was shaky and was not sufficient to fix the guilt. Magan Dulera, yet another witness examined by the petitioner was hearsay witness. The allegations against the workman were that when he reached the house of Magan Dulera, Magan Dulera was not available at his residence and the non-applicant workman had demanded money from the mother of the said Magan Dulera. Statement of Magan Dulera would be based upon the information received by him from his mother Laxmiben. If statements of Laxmiben are not reliable, then, the statement of Magan Dulera would have no legs to stand. Unless the source of information is relied upon, the person who confirms the information would not be relied upon nor the Court would be entitled to say that as he does not have any enmity with the delinquent, he would not say that he was passing wrong information. True it is that such person would not speak untrue but the question still

would be that whether information received and believed to be true was in fact true information. The person who receives information cannot go beyond the information nor can say that what he received was true, therefore, source of information even if it is untrue, information should be accepted to be true.

8. In the opinion of this Court, the Court below has given cogent reasons for not relying upon the statement of the witnesses and the case of the petitioner.

9. So far as the argument relating to non-appreciation of the evidence in accordance with law is concerned, law does not say that the evidence is to be appreciated in particular manner. It is always left to the jurisdiction and discretion of a Court to appreciate the evidence in accordance with the understanding of law. If the appreciation of evidence is perverse or findings are perverse, then only a Court under Article 227 of the Constitution would be entitled to interfere in the matter. One cannot

say that so long as evidence is not appreciated in their favour, the approach of the Court would be taken to be perverse. Jurisdiction to appreciate the evidence is upon the Court and a party can only make a submission that the evidence should be relied upon or not.

10. The manner in which the Court below has appreciated the evidence is certainly in accordance with law. The Court below has considered the evidence threadbare and has recorded the correct finding.

11. So far as the argument of frustration that the petitioner has lost confidence in the respondent, therefore, he should not be continued is concerned, this Court must reject it immediately. If the argument is accepted, it will lead to chaotic situation and would always give an upper hand to a master to sack an employee with simple assertion that he has lost confidence in the employee. One cannot be whimsical in saying that he has lost confidence in the employee. One has to bring reasons to the satisfaction of the Court and request the Court

to rely upon the reasons to hold that the Master is entitled to lose confidence in the employee.

12. In the present case, the employer could not satisfy the judicial conscience of the learned Labour Court and therefore failed. This Court is in absolute agreement with the findings recorded by the learned Labour Court. I hold that there is no reason to interfere in the matter.

13. The petition deserves to and is accordingly dismissed with costs of Rs. 5,000/- to be paid to the respondent workman. Rule is discharged. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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